

FEDERAL DEFENDER SERVICES OF WISCONSIN, INC.

LEGAL COUNSEL

Craig W. Albee, Federal Defender
Krista A. Halla-Valdes, First Assistant

Joseph A. Bugni, Madison Supervisor
John W. Campion
Shelley M. Fite
Anderson M. Gansner
Gabriela A. Leija
Peter R. Moyers
Ronnie V. Murray
Tom E. Phillip
Joshua D. Uller
Kelly A. Welsh

517 East Wisconsin
Suite 182
Milwaukee, Wisconsin 53202

Telephone 414-221-9900
Facsimile 414-221-9901

August 20, 2019

Honorable Lynn Adelman
U.S. District Judge
517 E. Wisconsin Avenue
Milwaukee, WI 53202

Re: *United States v. Kaitryn Van Asten*
Case No. 18-CR-35 (LA)

Dear Judge Adelman:

Mrs. Van Asten is to be sentenced by this Court on August 26 for two misdemeanor counts of unlawful conversion of Farm Service Agency collateral. We submit this letter in support of the parties' joint recommendation for a sentence of three years' probation. The recommended sentence is appropriate given the dire financial circumstances the Van Astens were in, that the money involved was used for basic farm and living expenses and not luxury goods, and that Mrs. Van Asten was inexperienced in running a farm and had little to do with making the ultimate decisions about getting loans and the buying and selling of cattle. She has no record whatsoever, has worked throughout her adult life, and is a loving mother to her three daughters.

Background

After graduating from Watertown High School in 2007, Kaity Thoma headed to Ripon College where she hoped to study teaching or business. Instead, during her freshman year she fell in love with a fellow student, Derek Van Asten, who dreamed of owning a dairy farm as his parents, grandparents and great grandparents had. Derek left school to

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start a farm in April 2008. Kaity joined him soon thereafter. They married in December 2008. Kaity attended school for one more semester after that, but Derek needed help on the farm so she withdrew from college.

For Kaity, who didn't grow up on a farm and had no farming experience before marrying her husband, this new life on a dairy farm was a "baptism by fire." She had no background in farming and only some high school and college accounting courses. But she was excited about supporting her husband's dream and she was willing to help however she could with chores, doing the books, and running errands. Everything she learned about farming was from Derek and she trusted and relied on his guidance. Derek started the farm and took out the first loan before they were married and she was not involved with the loan or discussions about its terms. As Derek's spouse, Kaity signed subsequent loans beginning with a loan on September 15, 2009. She was twenty years old at that time. In 2010, the Van Astens' first daughter, Laura, was born.

In 2012, the Van Astens bought a farm. There were unanticipated expenses associated with improving and maintaining the new place and a number of cows did not adapt well to the move and died. So even with milk prices temporarily high at the time, they were getting by, but struggling. There also were hardships in their personal life. Not long after the move to the new farm, Kaity had two miscarriages – in March and May 2013 (she also had had a miscarriage in 2009 shortly after she started doing farm work). When she learned she was pregnant again in early 2014, she reduced her amount of physical work on the farm as she believed that working with the cows had caused her miscarriages. There also had been an incident on Thanksgiving Day 2012 when her two-year-old, Laura had walked into the herd and only through the grace of God was not trampled. This also had discouraged her from working on the farm as often as she had.

As 2014 progressed, Kaity became less engaged and involved with the farm. She did things like picking up and depositing checks, entering information into QuickBooks, and doing other things that Derek needed help with. In March 2014, Derek decided to lease cattle and he negotiated the terms for the leases. Increasingly, they sold cows out of desperation to cover bills. Kaity would occasionally stand in for Derek if needed for a transaction and she picked up checks at his request with some frequency (which then would be issued to her). She was more like an employee than a manager. After their second daughter Hannah was born on September 24, 2014, Kaity's role in the farm further diminished.

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Like many Wisconsin dairy farmers, the Van Astens were facing enormous financial hardship. Unfortunately, their desperation led to poor decisions. By the beginning of 2015 they were on food stamps, didn't have gas to cook with, and Derek had become despondent and depressed and indicated to Kaity that he had contemplated committing suicide. Kaity feared for Derek's life and needed to protect her daughters so she tried to avoid stressful or confrontational conversations with Derek. After 2014, milk prices began plummeting, which resulted in ruin for many farms.¹ Given Derek's depression and actions, Kaity's avoidance and fears about suicide were understandable given suicide's prevalence among farmers.² Like most people in that type of situation, she struggled with how to deal with her deeply depressed spouse. It was all the more difficult because she was just 25 or 26 and had a baby and toddler. Ultimately, most of their cows were sold even though they either were loan collateral or leased.

Appropriate Sentence

Kaity is remorseful and ashamed for violating the law, the failure of their farm, and the financial damage that resulted. But she also knows that she and her husband are hard-working, of good character, and devoted to their family. She intends to work hard to provide for her family and to begin the process of repaying the money lost, which she knows will be a burden on her family for many years to come.

¹ See, e.g., Rick Barnett, *As dairy crisis crushes farmers, Wisconsin's rural identity in jeopardy*, Milwaukee Journal Sentinel, April 13, 2018, available at: <https://www.jsonline.com/story/money/2018/04/13/dairy-crisis-crushes-farmers-wisconsins-rural-identity-jeopardy/511881002/> (noting that Wisconsin lost 500 dairy farms in 2017 alone, that the number of herds was down 20% in the last 5 years, and that the Western District of Wisconsin had the highest number of Ch.12 farm bankruptcies in the country); Hope Kirwan, *Wisconsin Lost Record-Breaking Percent of Dairy Farms in 2018*, Wisconsin Public Radio, Dec. 17, 2018, available at <https://www.wpr.org/wisconsin-lost-record-breaking-percent-dairy-farms-2018> (noting that Wisconsin lost 638 dairy farms in 2018); Talia Kirkland, *Dairy farmers hit hard by declining milk demand*, Fox News, June 8, 2018, available at <https://www.foxnews.com/us/dairy-farmers-hit-hard-by-declining-milk-demand> (noting that price for 100 pounds of milk had dropped to \$15.30 from over \$25 in September 2014).

² Corey Kilgannon, *When the Death of a Family Farm Leads to Suicide*, N.Y. Times, March 19, 2018, available at: <https://www.nytimes.com/2018/03/19/nyregion/farmer-suicidesmark-tough-times-for-new-york-dairy-industry.html>. Debbie Weingarten, *Is help finally at hand for suicide crises on America's farms?* The Guardian, May 23, 2018. Available at: <https://www.theguardian.com/environment/2018/may/23/is-help-finally-at-hand-for-suicide-crisis-on-americas-farms> (noting that farmers take their lives at a rate higher than any other occupation and at twice the rate of military vets).

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Since leaving the farm in 2016, Kaity has taken additional positive steps in her life. She completed her education by obtaining her degree from Southern New Hampshire University in March 2019. She worked several full-time jobs at NEW Cooperative, Kemna Auto, and APS while living in Iowa where they relocated for Derek's work. This summer the family moved again, to Minnesota, for Derek to take a better job. Kaity is not currently working but is settling the family and preparing the girls for a new school year.

Based on all these circumstances, the joint recommendation for probation is appropriate. Kaity has no criminal record, is hard-working, and devoted to her family. There is no indication that she is a person of poor character, or was looking to take advantage of others. Jail time is unnecessary to teach her a lesson, provide adequate punishment, or protect the public. Kaity has continued to show in the time since losing the farm that she'll devote herself to prosocial activities, such as by working, taking care of her family (now three daughters) and education. The Van Astens have suffered enormous consequences already—the loss of their farm, financial ruin, a criminal conviction, the inability to declare bankruptcy, a huge civil judgment against them, and the enormous stress from all that's happened, including the strain of these proceedings. They now also will face the need to pay significant restitution. Accordingly, probation is an appropriate sentence.

Thank you for your consideration.

Sincerely,

s/ Craig W. Albee
Craig W. Albee

CWA/jmb